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Paper No. 9

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**COPY MAILED**

**OCT 31 2003**

**OFFICE OF PETITIONS**

In re Application of :  
Terrence Edward Rogers :  
Application No. 09/912,411 :  
Filed: April 19, 2001 : Decision on Petitions  
Attorney Docket Number: :  
P12614 :

This is a decision on two petitions. The first petition is a Petition and Fee for Filing Date of Patent Application Under 37 CFR 1.53, requesting the above-identified application be accorded the filing date of April 19, 2001. The second petition is a petition to withdraw the holding of abandonment, filed September 5, 2003<sup>1</sup>.

The petition under 37 CFR 1.53 is granted.

The petition under 37 CFR 1.181 is dismissed.

Background

Application papers in the above-identified application were filed on April 19, 2001. On September 4, 2001, the Office of Initial Patent Examination mailed a Notice of Incomplete Nonprovisional Application, stating that a filing date had NOT been accorded the application because the specification did not include at least one claim. The Notice also required the basic filing fee. The Notice set a two-month period for reply, with extensions of time available under 37 CFR \$1.136(a).

On November 2, 2001, Applicant timely filed a Petition and Fee for Filing Date of Patent Application Under 37 CFR 1.53, wherein Applicant averred that the application as filed was a complete application. In support of this assertion, Applicant submitted copies of Express Mail Label No. EL034577565US purporting to

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<sup>1</sup> The petition was originally filed on July 28, 2003, as evidenced by a copy of Applicant's return-receipt postcard filed via facsimile on September 5, 2003.

evinced filing of a complete application<sup>2</sup>. Applicant also submitted the basic filing fee on November 2, 2001.

On November 1, 2001, the Office of Initial Patent Examination mailed a Notice to File Corrected Application Papers, requiring a substitute specification in compliance with 37 CFR 1.52 because the line spacing on the abstract is not properly spaced. The Notice was properly mailed to the correspondence address of record on November 1, 2001.

On January 4, 2002, Applicant filed an Associate Power of Attorney, requesting all future communications be directed to Myers, Bigley, Sibley & Sajovec, P.A., at their correspondence address. On February 27, 2002, Applicant properly filed, as a separate paper, a Change of Correspondence Address to customer number 20792. Accord 37 CFR 1.4.

A Notice of Abandonment was incorrectly mailed to the former correspondence address of record on July 15, 2003. The Notice of Abandonment indicated as the reason for abandonment, Applicant's failure to respond to the Notice to File Corrected Application Papers, mailed November 1, 2001.

Applicant files the instant petition via facsimile, requesting the Office withdraw the holding of abandonment on the basis that Applicant timely filed a response to the September 4, 2001 Notice of Incomplete Nonprovisional Application. The instant petition is accompanied by a copy of a return-receipt postcard evincing receipt of a petition by this Office on July 28, 2003.

The Petition and Fee for Filing Date of Patent Application Under 37 CFR 1.53

A review of the application file reveals that the Petition and Fee for Filing Date of Patent Application Under 37 CFR 1.53 was timely filed and received in the Office on November 2, 2001.

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<sup>2</sup> The best evidence of what was filed on April 19, 2001, is a return-receipt postcard. "A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all items listed thereon by the PTO." MPEP § 503.

A further review of the file reveals that the specification as filed on April 19, 2001, contained 4 pages of claims, numbering 1 - 20.

Accordingly, the September 4, 2001 Notice of Incomplete Nonprovisional Application was mailed in error and is hereby withdrawn.

The Instant Petition to Withdraw Holding of Abandonment.

A review of the file reveals that the application became abandoned for failing to timely and properly reply the the Notice to File Corrected Application Papers, mailed November 1, 2001. A further review of the file reveals that the Notice to File Corrected Application Papers was properly mailed to the correspondence address of record.

Accordingly, the petition to withdraw the holding of abandonment is dismissed.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

Applicant is urged to file a petition stating that the delay was unintentional. A grantable petition under 37 CFR 1.137(b)<sup>3</sup> must be accompanied by: (1) the required reply,<sup>4</sup> unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c).

<sup>3</sup> As amended effective December 1, 1997. See Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53194-95 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 119-20 (October 21, 1997).

<sup>4</sup> In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

Applicant must reply to the Notice to File Corrected Application Papers, requiring a substitute specification in compliance with 37 CFR 1.52 because the line spacing on the abstract is not properly spaced. A copy of the Notice to File Corrected Application Papers is enclosed.

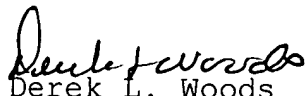
Further correspondence with respect to this matter should be addressed as follows:

By mail:           Commissioner for Patents  
                    PO Box 1450  
                    Alexandria, VA 22313-1450

By facsimile:   (703) 308-6916  
                    Attn: Office of Petitions

By hand:           Office of Petitions  
                    2201 South Clark Place  
                    Crystal Plaza 4, Suite 3C23  
                    Arlington, VA 22202

Telephone inquiries concerning this matter should be directed to the undersigned at (703) 305-0014.



Derek L. Woods  
Petitions Attorney  
Office of Petitions

Enclosure:       Notice to File Corrected Application Papers